

HOUSE BILL REPORT

SSB 6095

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to background checks for persons who will have access to children or vulnerable adults.

Brief Description: Addressing background checks for persons who will have access to children or vulnerable adults.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Kline and Roach).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/20/14, 2/26/14 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Allows individuals to be considered for employment in positions providing care and treatment to vulnerable adults even if they have criminal convictions, if those convictions were reviewed by Department of Social and Health Services (DSHS) in 2002 and the DSHS determined that the conviction would not prevent their employment or were the subject of a pardon, annulment, or similar procedure.
- Allows an agency contracting with the Children's Administration (CA) to hire an employee that would be precluded from employment with the DSHS based on results of a background check, but if they do, the DSHS has no liability related to the employment decision.
- Replaces the DSHS Secretary's list with the Adoption and Safe Families Act of 1997 as the list of disqualifying crimes for which the CA may deny a license or unsupervised access to children.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 12 members: Representatives Kagi, Chair; Freeman, Vice Chair; Walsh, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Fagan, Goodman, Ortiz-Self, Roberts, Sawyer, Senn, Young and Zeiger.

Staff: Luke Wickham (786-7146).

Background:

Secretary's Lists.

The Secretary of the Department of Social and Health Services (DSHS) maintains different lists of crimes and negative actions that would prevent an individual from working or serving with unsupervised access to vulnerable adults, juveniles, and children. The crimes included on this list are designated either as permanent disqualifiers or disqualifiers for five years, after which an overall assessment of the persons character, competence, and suitability to have unsupervised access will determine denial. Individuals with pending charges contained on the list are denied unsupervised access until a determination is made by a court.

Negative actions on the DSHS Secretary's list include:

- a finding that an individual abused, neglected, exploited, or abandoned a vulnerable adult, juvenile, or child issued by an agency, Administrative Law Judge, or court of law;
- termination, revocation, suspension, or denial of a license, certification, and/or state or federal contract;
- relinquishment of a license, certification, or contract in lieu of an agency negative action;
- revocation, suspension, denial, or restriction placed on a professional license; and
- a Department of Health (DOH) disciplinary authority finding.

The DSHS may grant an administrative waiver for a person with a disqualifying crime or negative action. This process is initiated by a DSHS social worker, licensor, or contract manager, who may determine that allowing an individual with a listed crime or negative action would not jeopardize the child's health or safety.

Adoption and Safe Families Act of 1997 Disqualifying Crimes.

The Adoption and Safe Families Act of 1997 (ASFA) requires that a procedure exist for providing criminal record checks, including fingerprint-based checks of national crime databases, for any prospective foster or adoptive parent before final placement approval. The ASFA also designates certain crimes for which final approval cannot be granted, including felony convictions for child abuse or neglect, spousal abuse, a crime against children, or crimes involving violence including rape, sexual assault, or homicide, but not including physical assault or battery. The ASFA designates certain crimes for which final placement approval cannot be granted if those crimes were committed within the last five years, including felony convictions for physical assault, battery, or drug related offenses.

Exemptions for Employees Providing Care and Treatment to Vulnerable Adults with Criminal History.

An agency, facility, or individual that provides care and treatment to vulnerable adults must meet certain licensure requirements through the DSHS and the DOH. One of these

requirements is that persons associated with these agencies or facilities having unsupervised access to vulnerable adults are not convicted of certain crimes against persons. However, there are exceptions to this requirement, including:

- if the offense was Assault in the fourth degree and three years have passed;
- if the offense was Prostitution and three years have passed;
- if the offense was Theft in the third degree and three years have passed;
- if the offense was Theft in the second degree and five years have passed; or
- if the offense was Forgery and five years have passed.

Summary of Amended Bill:

Individuals whose criminal history would otherwise disqualify them from employment in a position that involves unsupervised access to children, vulnerable adults, or persons with mental illness or developmental disabilities cannot be disqualified if the DSHS reviewed that individual's criminal history through a background assessment review team process in 2002 and determined that the individual could remain in a similar position, or if the disqualifying conviction was the subject of a pardon, annulment, or other equivalent procedure.

If an agency that contracts with the Children's Administration (CA) chooses to hire an individual that would be precluded from employment with the DSHS based on a disqualifying crime or negative action, the contracting agency assumes all liability for the employment decision.

The DSHS Secretary's list is replaced by the ASFA for purposes of disqualifying crimes for which the CA may deny or delay a license of approval of unsupervised access to children. The DSHS may also deny or delay a license or approval of unsupervised access to children based on records revealed by a background check that related to child safety, permanence, or well-being.

Amended Bill Compared to Substitute Bill:

The striking amendment specifies that if an agency that contracts with the CA chooses to hire an individual that would be precluded from employment with the DSHS based on a disqualifying crime or negative action, the DSHS has no liability arising from the employment decision.

The striking amendment replaces the DSHS Secretary's list with the ASFA for purposes of disqualifying crimes for which the CA may deny or delay a license of approval of unsupervised access to children. It also specifies that DSHS may deny or delay a license or approval of unsupervised access to children based on records revealed by a background check that related to child safety, permanence, or well-being.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is traumatic for families when children are removed. It is much better for children to be placed with family members. It is much better for the state to use the ASFA list because it will allow more children to be placed with relatives. This bill allows more options for placements and employment decisions. The bill provides more flexibility by using the ASFA list of designated crimes. This bill provides a technical fix to allow state employees to remain working in positions with access to vulnerable adults.

(With concerns) Currently, the DSHS is allowed to place a child in the home of a relative or suitable other, without a fingerprint background check after a shelter care hearing. This bill would allow this kind of placement after a dependency fact-finding hearing. If an individual has not lived in this state for the last three years, that person must have a fingerprint-based background check. The fingerprint-based background check will recover crimes in other states. Sometimes this fingerprint-based background check reveals crimes that would disqualify an individual for placement. Allowing placement without completion of this background check after a dependency fact-finding hearing opens the possibility that children may have to be moved at a later stage of the case. The systems that are used to protect children in this state are fraudulent. The state is being reduced from a state of natural law to a state of contract law. The children are precious. Anything that you do to tighten up protections is wonderful, but without reviewing certain evidence it is difficult to make an informed decision. The system that is being used is corrupt and fraudulent.

(Opposed) None.

Persons Testifying: (In support) Shayne Rochester, Snohomish County Parent Advocacy Committee; Laurie Lippold, Partners For Our Children; and Matt Zuvich, Washington Federation of State Employees.

(With concerns) Jennifer Strus, Department of Social and Health Services; and Lucy Luddington.

Persons Signed In To Testify But Not Testifying: None.